

8/23/2004 Barrett, Donald

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EXHIBITS: 33 - 36

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

- - - - -x

ITV DIRECT, INC.

Plaintiff

CIVIL ACTION

Vs.

NO. 04-CV-10421-JLT

HEALTHY SOLUTIONS, LLC, ET AL

Defendants

- - - - -x

AND RELATED ACTIONS

- - - - -x

DEPOSITION OF DONALD BARRETT

taken on behalf of the Defendants pursuant to the
Federal Rules of Civil Procedure, before Carole M.
Wallace, Certified Shorthand Reporter and Notary Public,
at the offices of Posternak, Blankstein & Lund, LLP, 800
Boylston Street, Boston, Massachusetts 02210, on
Monday, August 23, 2004, commencing at 9:58 a.m.

HENNESSEY CORP. D/B/A ROBERT H. LANGE CO.

50 Congress Street - Boston, Massachusetts 02109

Tel: (617) 523-1874

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8/23/2004 Barrett, Donald

1 APPEARANCES:

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On behalf of the Plaintiff

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9 On behalf of the Plaintiff

10 Becky V. Christensen, Esq.
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11 384 Forest Avenue - Suite 13
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12 949 497-7676
On behalf of the Defendants

13
14 VIDEOGRAPHER:

15 Stephen Hartman, CLVS
Hennessey Corp. d/b/a Robert H. Lange Co.
16 50 Congress Street
Boston, Massachusetts 02109

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18 ATTORNEY CHRISTENSEN RETAINED THE ORIGINAL EXHIBITS
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I N D E X

Witness	Direct	Cross	Redirect	Recross
DONALD BARRETT	5	137		

* * * *

E X H I B I T S

No.	Description	Ident.
33	Answer and Crosscomplaint of Direct Marketing Concepts	24
34	Affidavit of Donald Barrett	26
35	Bates No. ITV 288 - 290, ITV 395	119
36	Fax and transcript of final version . done 9/10/03	131

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1 THE VIDEOGRAPHER: We are now recording
2 and on the record. My name is Stephen Hartman, a
3 Certified Legal Video Specialist for Hennessey
4 Corp., DBA Robert H. Lange Co. Our business address
5 is Fifty Congress Street, Suite 525, Boston,
6 Massachusetts 02109. Today is August 23, 2004.
7 The time is 9:58.

8 This is the deposition of Donald Barrett
9 in the matter of ITV, Direct, Plaintiff Vs. Healthy
10 Solutions, LLC et al, Defendants and Related Cases
11 in the United States District Court, District of
12 Massachusetts, case number 04-CV-10421-JLT. This
13 deposition is being taken at 800 Boylston Street,
14 Boston, Massachusetts on behalf of the defendants.
15 The court reporter is Carole Wallace.

16 Will counsel please state their
17 appearances and the court reporter will administer
18 the oath.

19 MS. CHRISTENSEN: Becky Christensen of
20 Levin & O'Connor for defendants Healthy Solutions
21 LLC, Health Solutions, Inc., Alejandro Guerrero,
22 Greg Geremesz and Michael Howell.

23 MR. BROOKS: I'm Peter Brooks and I
24 represent ITV and Direct Marketing Concepts.

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1 DONALD BARRETT,
2 having been satisfactorily identified by the
3 production of his driver's license and duly sworn by
4 the Notary Public, was examined and testified as
5 follows:

6 DIRECT EXAMINATION BY MS. CHRISTENSEN

7 Q Please state your full legal name.

8 A Full legal name is Donald William Barrett, Jr.

9 Q What is your home address?

10 A It is Nine Tall Tree Drive Beverly, Massachusetts
11 01905.

12 Q Have you ever had your deposition taken before?

13 A Yes.

14 Q How many times, approximately?

15 A I can't -- Approximately three or four times.

16 Q You understand that you are giving testimony under
17 oath today, is that right?

18 A Yes.

19 Q Even though we are in a conference room, it would be
20 the same as if you were in a courtroom?

21 A Absolutely.

22 Q Is there any reason that you can't give your very
23 best testimony today?

24 A No, I can give my very best testimony today.

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1 Q Please tell me whether you are employed.

2 A Yes, I am employed.

3 Q What do you do?

4 A I own a company called ITV Direct and Direct
5 Marketing Concepts along with my business partner.

6 Q What do you do for ITV Direct?

7 A I host the infomercial aspect of the direct response
8 business.

9 Q Do you have any title for your work at ITV Direct?

10 A My title is president and CEO.

11 Q Are you a shareholder?

12 A Yes, I am.

13 Q What percentage of the shares do you own?

14 A I believe fifty percent.

15 Q You mentioned a business partner. Who is that?

16 A His name is Robert Maihos, M A I H O S.

17 Q What percentage of shares does he own?

18 A The other fifty percent.

19 Q What about Direct Marketing Concepts, what do you do
20 for them?

21 A The same thing.

22 Q What you say "the same thing," would you describe
23 your duties for me.

24 A The Direct Marketing Concepts was the original

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1 company that we started. ITV Direct was a company
2 that I started to actually produce the infomercials.
3 Direct Marketing Concepts doesn't produce the
4 infomercials any more, they are mainly the company
5 that answers the telephones.

6 Q Do you have a title at Direct Marketing Concepts?

7 A It would be the same, president and CEO.

8 Q Do you own some shares in Direct Marketing Concepts?

9 A Exact same as Direct Marketing Concepts. Same as
10 ITV Direct, rather.

11 Q So that would be fifty percent ownership for you and
12 fifty percent for Mr. Maihos?

13 A Correct.

14 Q You mentioned that you were the host for the
15 infomercials. Do you have any operational
16 responsibilities?

17 A I do, but I really don't pay attention to the
18 day-to-day operations.

19 Q Do you have general oversight duties?

20 A Yes, I oversee things.

21 Q Describe for me if you would for ITV Direct the
22 ultimate decision making authority as a general
23 proposition.

24 A Explain the question.

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1 Q Ultimately who makes the decisions for ITV Direct,
2 Inc.?

3 A Ultimately me and my partner, Robert Maihos.

4 Q How about for Direct Marketing Concepts?

5 A That would be the same.

6 Q You mentioned a moment ago that Direct Marketing
7 Concepts was the first of the two companies?

8 A Correct.

9 Q Would you describe for me when it was founded and
10 how it was built.

11 A How it was built?

12 Q Why don't we start with when it was founded.

13 A I think it was started in 2002. I'm not a hundred
14 percent sure. Around that time period. And it was
15 started out of my mom's house. I had six telephones
16 in a garage. There was a little room over the
17 garage and I had six telephones and that's where I
18 started the company.

19 Q Did you start in the infomercial business or what
20 were you selling?

21 A Yes, I started in the infomercial business and
22 although I wasn't producing shows at the time, I
23 would get shows from other companies, put my 800
24 number on their shows, buy the product from them

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1 wholesale and they would let me use their
2 infomercial per se. And I could make those
3 infomercial work because I didn't have any overhead
4 so to say. I worked out of mom's house, I bought my
5 own media, I answered my own phone calls, so I could
6 make shows work that frankly other people couldn't
7 make work.

8 Q What was your first product, do you remember?

9 A The first product -- And we didn't produce the first
10 shows. The first show was a program called
11 Dr. Mortar's Dynamic Health. It was a tape series.

12 Q What kind of product was that?

13 A Audio tape series.

14 Q What other products were you selling from Direct
15 Marketing Concepts in the beginning?

16 A Ultra Body Toddy.

17 Q What was that?

18 A That was a nutritional product. It was 300
19 nutrients in it. It was the Ultra Body Toddy. The
20 name pretty much says it all. It has everything in
21 it.

22 Q Who created that nutritional supplement?

23 A A could company Supra Life out of San Diego,
24 California. Supra Life. I'm not sure if they are

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1 still in business.

2 Q Who was the owner of Supra Life, if you recall?

3 A I don't know. The president's name was Mike Lewis,
4 and I'm not sure who owned the company.

5 Q What other products do you recall from the beginning
6 of Direct Marketing Concepts?

7 A Those are the basic products that we started with.
8 I ran the Dr. Mortar show for the first year or two.

9 Q You mentioned at that time that you did not actually
10 produce the infomercials yourself. When, if ever,
11 did Direct Marketing Concepts begin to produce
12 infomercials itself?

13 A I believe the very first show I did was with Alex
14 Guerrero, the very first show I produced.

15 Q I want to make sure I understand this. ITV Direct
16 essentially produces the infomercials, and Direct
17 Marketing Concepts answers the phone, places the
18 orders, that sort of thing, is that a fair
19 statement?

20 A I really came up with ITV Direct because I liked the
21 name more. I kind of weaseled, not weaseled but
22 said ITV Direct, we can use that it for the
23 production end of it and we'll use Directing
24 Marketing Concepts for the back end of the business.